

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201807436	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/31/2018 10:30 AM	Location of Incident: Prince Street and Crosby Street	Precinct: 05	18 Mo. SOL 2/29/2020	EO SOL 2/29/2020	
Date/Time CV Reported Mon, 09/10/2018 1:35 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/10/2018 1:35 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Gargano	24508	938534	084 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Gargano	Abuse: Police Officer Michael Gargano drew his gun.	[REDACTED]
B.POM Michael Gargano	Force: Police Officer Michael Gargano pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Michael Gargano	Abuse: Police Officer Michael Gargano threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]
D.POM Michael Gargano	Discourtesy: Police Officer Michael Gargano spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

§ 87(2)(g)

On September 10, 2018, § 87(2)(b) after seeing a video posted to a social media website, filed this complaint via the CCRB website on behalf of § 87(2)(b).

On August 31, 2018, at approximately 10:30 a.m., PO Michael Gargano of the 84th Precinct approached § 87(2)(b) and other individuals in the vicinity of Prince Street and Crosby Street in Manhattan. PO Gargano drew his gun (**Allegation A -Abuse of Authority: Gun drawn, § 87(2)(g)**), allegedly pointed it at § 87(2)(b) (**Allegation B -Force: Gun pointed, § 87(2)(g)**), and made comments including, "I'll knock you the fuck out" (**Allegation C - Abuse of Authority: Threat of force, § 87(2)(g)** and **Allegation D -Discourtesy: Word, § 87(2)(g)**) and, "Shoot your fucking heroin and die" (within Allegation D). § 87(2)(b) was not arrested as a result of the incident.

Video footage was recovered from the social media website to which it was posted. The video file is attached to IA 17.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Gargano drew his gun.

Allegation (B) Force: Police Officer Michael Gargano pointed his gun at § 87(2)(b)

§ 87(2)(b) stated, in a telephone statement (Board Review 01), that in the vicinity of Prince Street and Crosby Street, he stood approximately two feet away from four to five individuals whose identities he refused to provide and who engaged in an "altercation" in that they shouted profanities at each other. § 87(2)(b) turned and saw PO Gargano standing approximately ten feet from him with his gun drawn. PO Gargano raised both of his arms and pointed his gun towards § 87(2)(b) such that its muzzle was level with his face. § 87(2)(b) asked PO Gargano why he had drawn his gun if no civilian in the vicinity possessed a weapon.

PO Gargano stated (Board Review 02) that he was the only officer at the location in a paid detail assignment in which he had been informed that a truck loading merchandise into the Supreme store had been robbed a week prior to this incident. When PO Gargano saw § 87(2)(b) and another male repeatedly yelling at each other in a manner he thought was intended to attract his attention, he instructed them to leave the location. They did not do so, and five additional males walked near § 87(2)(b).

One member of this group pushed another, and PO Gargano yelled multiple times, instructing the group to leave, which it did not. A member of the group attempted to punch another, and, because his verbal commands had failed, PO Gargano walked towards the group, which was approximately five to six paces from him, with the intent of his doing so causing the group to disperse. PO Gargano yelled commands to leave the location to the group and, when he within an arm's length of the seven males, they turned and looked at him.

Because the group yelled, the group had an "angry" demeanor and "disheveled" appearance suggesting that they might possess needles or other weapons, the members of the group appeared to PO Gargano to be familiar with each other, and an individual had attempted to punch another, PO Gargano feared that the group would "come after" him. Nothing other than the group's "disheveled" appearance suggested to PO Gargano that its members might possess a weapon. Due to PO Gargano's fear and his thought that he would be unable to "take on" seven

civilians using only his hands, he drew his gun from its holster, held it at waist level, and pointed towards § 87(2)(b) with his finger. PO Gargano denied ever pointing his gun towards § 87(2)(b) § 87(2)(b).

§ 87(2)(b) All of the seven males other than § 87(2)(b) backed away from PO Gargano. § 87(2)(b) walked towards him. After holding his gun for approximately one minute, no additional factors contributed to PO Gargano's fear for his safety, which remained at the same level as § 87(2)(b) § 87(2)(b) approached him. PO Gargano returned his gun to its holster when he determined that it was no longer necessary and that any force potentially needed against § 87(2)(b) could be conducted by hand.

The video footage, which is embedded in its entirety below (Board Review 10), does not appear to comprehensively capture the incident. At the outset of the footage, PO Gargano is seen holding his gun at his waist with its muzzle pointed downwards. PO Gargano points with his finger towards an individual out of view. An individual is heard saying, “There’s no reason to pull out a gun.” The footage does not appear to indicate whether PO Gargano did or did not point his gun at § 87(2)(b) prior to the footage’s start.

An officer's decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When the officer determines that this potential for injury has abated, the officer must holster the firearm as soon as practicable. NYPD Patrol Guide, Section 221-01 (Board Review 03).

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Michael Gargano threatened § 87(2)(b)
 with the use of force.

Allegation (D) Discourtesy: Police Officer Michael Gargano spoke discourteously to § 87(2)(b)

It is undisputed that PO Gargano threatened § 87(2)(b) with the use of force and spoke to him using profanity.

PO Gargano stated that he turned away from and walked away from § 87(2)(b) after holstering his gun. § 87(2)(b) yelled, "You want to fight? I'm going to knock you out." PO Gargano told § 87(2)(b) "I'll knock you the fuck out" in response. PO Gargano told § 87(2)(b) this with the intent to "get higher than him to bring him back down" to a "level playing surface" where his level of stress would be lower, and he did not use the phrase he chose for any other purpose. PO Gargano then told § 87(2)(b) to "shoot [his] heroin and fucking die." PO Gargano intended for this statement to cause § 87(2)(b) to cease making comments he did and made the statement due to his "frustration of the whole situation boiling over" and not for any other reason.

An officer must not use more than the reasonable force necessary to gain control or custody of a subject and must use de-escalation techniques to safely gain voluntary compliance to reduce or eliminate the necessity to use force. NYPD Patrol Guide, Section 221-01 An officer must be courteous and respectful when interacting with members of the public. NYPD Patrol Guide, Section 203-09 (Board Review 04). While discourteous language is justifiable in some instances, it is not justified when it solely serves a purpose illegitimate to law enforcement, such as belittlement. NYPD Department Advocate Office Deputy Commissioner of Trials (DCT), Number 2015-15012 (Board Review 09).

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 05).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 06).
- PO Gargano has been a member-of-service for 13 years and has been a subject in two CCRB complaints and two allegations, neither of which were substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On December 18, 2018, a Notice of Claim inquiry was sent to the New York City Office of the Comptroller, and the results will be added to the case file upon receipt (Board Review 07).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 08).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date